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OFFICE OF PETITIONS

Patterson & Sheridan
3040 Post Oak Blvd, Suite 1500
Houston, TX 77056

In re Application of
Little Jr.
Application No. 09/652,648
Filed: August 21, 2000
Attorney Docket No. TAL/0002

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:
: DECISION GRANTING PETITION IN
: PART AND HOLDING PETITION IN :
: ABEYANCE PART
:
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 1.705" timely¹ filed June 30, 2006 requesting that the Office adjust the calculation at the time of the notice of allowance from a determination of 0 days to a determination of 902 days.

The application is granted-in-part as it relates to all PTA issues other than 37 CFR 1.702(b). The petition related to 37 CFR 1.702(b) will be held in abeyance until after the actual patent issue date. The determination of zero (0) days remains. However, the amount of USPTO delay is 808 days and the amount of applicant delay remains 855 days.

Applicants assert that the proper amount of calculation is 1031 days under 37 CFR 1.704(b), 118 days under 37 CFR 1.702(a)(1), 35 days under 37 CFR 1.702(a)(2). Applicants further assert that the amount of applicant delay is 189 days and 62 days.

Applicants arguments are persuasive to the extent herein indicated. The Office notes that there was a delay under 37 CFR 1.702(a)(1), but the delay amounted to 119 days not 118 days asserted by applicant. Moreover, the Office delayed by a period of 205 days under 37 CFR 1.702(a)(2) for filing a reply to applicant response of 8/6/2004 on June 29, 2005.² In addition, the USPTO mailed the notice of allowance on May 17, 2006, 195 reduction under 37 CFR 1.702(a)(2). In addition, the USPTO failed to assess a delay of 289 days for the failure to reply to applicants amendment until 3/5/2004. The additional PTA grant was also under 37 CFR 1.702(a)(2). Applicant delays of 292 days and 563 days are proper reduction under 37 CFR 1.704(c)(7).

¹Issue fee paid on June 30, 2006.

²The delay began on 12/7/04 and ended on June 29, 2005, date of mailing of reconstruction notice.

Accordingly, at the time of the mailing of the notice of allowance the amount of delay USPTO delay is 808 days. The amount of applicant delay is 855. Accordingly, the overall amount of PTA remains zero (0) days at the time of the mailing of the notice of allowance.

In addition, the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, under 37 CFR 1.702(b) as well as failing to issue the application within four months of the payment of the issue fee a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). Knowledge of the issue date is also necessary to determine whether or not the USPTO issued the application within four months of the payment of the issue fee and all other requirements being satisfied. See 37 CFR 1.702(a)(4).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years and whether the Office issued the application within four months of the payment of the issue fee. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

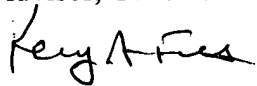
Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The office also notes that at the time of the mailing of allowance, the amount of PTA is four hundred and eleven days (411) days with five hundred and fifty-nine (559) days of administrative delay pursuant to 37 CFR 1.702(a)(1). Applicant delayed twenty-six (26) days pursuant to 37 CFR 1.704(c)(8) and one hundred and twenty-two (122) days of applicant delay under 37 CFR 1.704(b).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. Any Office delays in issuance of the patent more than four months past the payment of the issue fee and more than three years after the filing date will be provided for in the issuance notification letter mailed prior to the issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at (571) 272-7757.

A handwritten signature in black ink, appearing to read "Kery Fries", written in a cursive style.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Pair calculation

Day : Tuesday
Date: 2/20/2007

Time: 15:06:16

PALM INTRANET

PTA Calculations for Application: 09/652648

Application Filing Date:	08/31/2000	PTO Delay (PTO):	519
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	855
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	289		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
69	02/20/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	289		
52	05/17/2006	MAIL NOTICE OF ALLOWANCE	195		41
51	05/16/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
50	05/17/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
49	05/16/2006	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
48	05/02/2006	PETITION DECISION - DISMISSED			
47	05/01/2006	CORRESPONDENCE ADDRESS CHANGE			
46	05/02/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
45	09/30/2005	PETITION ENTERED			
44	10/25/2005	CORRESPONDENCE ADDRESS CHANGE			
43	09/30/2005	FILE MARKED FOUND			
42	08/19/2005	CORRESPONDENCE ADDRESS CHANGE			
41	07/03/2005	RESPONSE TO 37 CFR 1.251 NOTICE - PAPERS PROVIDED FOR FILE RECONSTRUCTION			
40	06/29/2005	MAIL RECONSTRUCTION NOTICE - PENDING APPLICATION	205		29
33	06/28/2005	RECONSTRUCTION NOTICE UNDER 37 CFR 1.251 - PENDING APPLICATION			
32	05/26/2005	FILE MARKED LOST			
31	01/10/2005	NOTICE OF ALLOWABILITY			
30	10/20/2004	DATE FORWARDED TO EXAMINER			
29	08/06/2004	RESPONSE AFTER NON-FINAL ACTION		563	21
28	10/20/2004	MAIL NOTICE OF RESCINDED ABANDONMENT			
		NOTICE OF RESCINDED ABANDONMENT IN TCS			

27	10/20/2004				
26	08/06/2004	WORKFLOW INCOMING AMENDMENT IFW			
25	08/12/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
24	08/09/2004	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
23	03/05/2004	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
22	02/10/2004	DATE FORWARDED TO EXAMINER			
21.1	01/21/2003	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
21	01/21/2003	RESPONSE AFTER NON-FINAL ACTION		292	8
20	12/04/2003	MAIL NOTICE OF RESCINDED ABANDONMENT			
19	12/03/2003	NOTICE OF RESCINDED ABANDONMENT IN TCS			
18	05/08/2003	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
17	05/08/2003	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
16	02/03/2003	PETITION TO REVIVE APPLICATION - GRANTED			
15	01/21/2003	PETITION ENTERED			
14	11/27/2002	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
13	11/27/2002	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
12	10/18/2002	UNTIMELY (LATE) AMENDMENT FILED			
11	05/15/2002	CORRESPONDENCE ADDRESS CHANGE			
10	04/13/2002	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
9	04/13/2002	DATE FORWARDED TO EXAMINER			
8.1	04/04/2002	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
8	04/04/2002	RESPONSE AFTER NON-FINAL ACTION			
7	02/27/2002	MAIL NON-FINAL REJECTION	119		-1
6	02/25/2002	NON-FINAL REJECTION			
5	12/11/2000	CASE DOCKETED TO EXAMINER IN GAU			
4	10/20/2000	APPLICATION DISPATCHED FROM OIPE			
3	10/17/2000	CORRESPONDENCE ADDRESS CHANGE			
2	09/19/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			

1

08/31/2000

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Search Another: Application#

EXPLANATION OF PTA CALCULATION**EXPLANATION OF PTE CALCULATION**

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